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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
	)	
TDS Telecommunications Corporation Petition for Waiver of Coding Digit Requirement	)	
	)	
International Telecard Association Petition for Reconsideration of Payphone Compensation Obligation	)	
	)	
AirTouch Paging Petition for Waiver of Payphone Compensation Obligation	)	

Adopted: March 9, 1998 Released: March 9, 1998

By the Chief, Common Carrier Bureau:

MEMORANDUM OPINION AND ORDER

Adopted: Released:

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I. INTRODUCTION

1. In this order we clarify and waive certain requirements established in the *Payphone Orders*[1] regarding payphone-specific coding digits[2] in order to facilitate the transition for local exchange carriers ("LECs"), payphone service providers ("PSPs") and interexchange carriers ("IXCs")[3] to provide and receive payphone-specific coding digits to identify calls from payphones to pay payphone compensation for subscriber 800 and access code calls. We conclude that the waivers we grant in this order to ensure the orderly transition for the requirements we established in the *Payphone Orders* to implement Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act"), are in the public interest.[4] We find that the waivers we grant herein reflect the transitional "default per-call rate" period established by the Commission in the *Payphone Orders* and extended in the *Second Report and Order.*[5] We note that almost 80% of payphones are expected to

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[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20,541 (1996) ("*Report and Order*"); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("*Order on Reconsideration*") (together the "*Payphone Orders*"). *The Payphone Orders* were affirmed in part and vacated in part. *See Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) (*"Illinois Public Telecomm."*). *See also* Second Report and Order, CC Docket No. 96-128, FCC 97-371 (rel. Oct. 9, 1997) ("*Second Report and Order*"), *pets. for recon. pending, review pending, MCI Telecomm. Corp. v. FCC*, D.C. Circuit No. 97-1675 (filed Nov. 7, 1997); *Sprint Corp. v. FCC*, D.C. Circuit No. 97-1685 (filed Nov. 13, 1997); *Personal Communications Industry Association v. FCC*, D.C. Circuit No. 97-1709 (filed Dec. 1, 1997); *Illinois Public Telecommunications Association v. FCC*, D.C. Circuit No. 97-1713 (filed Dec. 3, 1997).

[2] Payphone-specific coding digits provide a method for LECs to transmit, with the automatic number identification (ANI), information (coding number or digits) identifying a call as having been placed specifically from a payphone. *See Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64.

[3] For purposes of paying compensation for compensable calls and other associated obligations, such as tracking calls, we note that the term "IXC" includes a LEC when it provides interstate, intraLATA toll service. *See Report and Order*, 11 FCC Rcd at 20,584, para. 83 n.293, *Order on Reconsideration*, 11 FCC Rcd at 21270, paras. 74-75, 21278, para. 92.

[4] 47 C.F.R § 276.

[5] *See Report and Order*, 11 FCC Rcd at 20,572, para. 60; *Second Report and Order* at para 121.

provide payphone-specific coding digits by March 9, 1998, and the number of payphone digits for which payphone-specific coding digits are available will continue to increase over the next few months as technical problems are overcome by LECs.[6]

2. Accordingly, in this order, we clarify the requirements established in the *Payphone Orders* for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs beginning October 7, 1997. We clarify that automatic number information indicators ("ANI ii")[7] and flexible automatic numbering identification ("FLEX ANI")[8] are the methods to provide payphone-specific coding digits that comply with the requirements of the *Payphone Orders*.[9] We also clarify the requirement for federal tariffs that LECs must file pursuant to the *Payphone Orders*.[10] LEC FLEX ANI tariff revisions to provide FLEX ANI to IXCs must be filed no later than March 31, 1998, with a scheduled effective date of April 15, 1998, if a LEC is able to provide FLEX ANI to 25% or more of the smart payphones in its service area.[11] Thereafter, within the waiver period granted in this order, a LEC must file its FLEX ANI tariff to provide FLEX ANI to IXCs no later than when it is able to provide FLEX ANI to 25% or more of the smart payphones in its service area. After filing the FLEX ANI tariff, LECs will continue to make FLEX ANI available as each end office becomes FLEX ANI capable. LEC tariffs to recover the costs of implementing FLEX ANI from PSPs must be filed no later than 30 days after full implementation of

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6 *See infra* paras. 65, 69.

7 *See infra* para. 19 for the definition and characteristics of ANI ii.

8 FLEX ANI permits the association of additional digits with specific calling party classes of service (e.g. coin phone, hotel/motel, and prison service). FLEX ANI information digits provide information along with the calling party's directory number, which is useful for billing and paying compensation. FLEX ANI coding digits are transmitted as part of the ANI signaling sequence and are used by the receiving switch to identify the type of originating line or the type of call being made. *Open Network Architecture User's Guide*, June 1996 at 92.

9 As discussed *infra*, ANI ii as currently deployed by the LECs does not provide all the payphone-specific coding digits necessary to identify payphones for payphone compensation. Pursuant to the waivers provided in the *Bureau Waiver Order* and this order, ANI ii can be used to provide the "27" payphone-specific coding digit until either additional ANI ii codes are hardcoded or FLEX ANI is implemented in a switch. Based on the record before us regarding the additional costs and time it would require to hardcode additional ANI ii digits to provide all of the payphone-specific coding digits necessary for per-call compensation, we clarify in this order that the transmission of payphone-specific coding digits by LECs through FLEX ANI is required unless a LEC hardcodes into all of its switches all the payphone-specific coding digits discussed herein as necessary for identifying payphones calls for per-call compensation. Accordingly, we do not require the hardcoding of these additional ANI ii digits by LECs, although this is an approach that might be used by some LECs, in lieu of FLEX ANI, to transmit payphone-specific coding digits to satisfy their transmission obligations under the *Payphone Orders*. *See infra* paras. 23-25. Where a LEC chooses to employ hardcoding to provided payphone-specific coding digits and to recover the incremental costs from PSPs, as provided in this order, we assume that LEC would file an appropriate tariff as provided in other parts of this order. *See* for example para. 40.

10 *See Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

11 *See infra* para. 72, which states that a LEC must tariff FLEX ANI service to IXCs as required in this order no later than when 25% or more of the "smart" payphones it serves are capable of providing payphone-specific coding digits through FLEX ANI. We grant an extension from March 9, 1998 to March 31, 1998, for those LECs that have not filed tariffs to provide FLEX ANI to IXCs in compliance with the requirements of this order.

FLEX ANI. In this order we also grant permissions and waivers under Part 69 of the Commission's rules so that LECs can establish rate elements to recover the costs of implementing FLEX ANI to provide payphone-specific coding digits for per-call compensation.[12]

3. We affirm our grant in the *Bureau Waiver Order*,[13] on our own motion,[14] of a limited waiver of five months, until March 9, 1998, to those LECs and PSPs who assert that they cannot provide payphone-specific coding digits as required by the *Payphone Orders*. We also grant, to the extent described herein, the requests of USTA, TDS, and the LEC Coalition.[15] In addition, we grant limited waivers, subject to certain procedures, for LECs unable to provide payphone-specific coding digits through FLEX ANI by March 9, 1998, because fully implementing FLEX ANI would require additional time,[16] or because implementing FLEX ANI is either technically infeasible[17] or would result in a midsize or small LEC being unable to recover its costs for implementing FLEX ANI for payphone compensation within a reasonable period.[18] The waivers we grant to LECs and PSPs in this order also apply to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXCs for subscriber 800 and access code calls. Those LECs and PSPs that are able to transmit the required coding digits by March 9, 1998, remain obligated to do so. Similarly, all LECs and PSPs are obligated to transmit the required coding digits as soon an they are technically capable, but in any event, no later than the end of the waiver period for which they are eligible pursuant to this order.

4. During the period of the *Bureau Waiver Order* and the waivers granted herein, the IXC obligation to pay per-call compensation established in the *Payphone Orders* remains in effect.[19]

12 47 C.F.R. Part 69. See *infra* paras. 46-49.

13 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, 12 FCC Rcd 16,387 (Com. Car. Bur. 1997) (*"Bureau Waiver Order"*).

14 *See* Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3.

15 Petition for Waiver of the United States Telephone Association, Sept. 30, 1997 ("USTA Petition"); Letter from Michael Kellogg, LEC Coalition, to John Muleta, FCC, July 28, 1997 ("LEC Coalition Petition"); (members of the LEC Coalition include Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, SBC, SNET and US West); TDS Communications Corporation, Petition for Waiver, October 1, 1997 ("TDS Petition"). *See* Letter from Michael K. Kellogg, LEC Coalition to John Muleta, FCC at 1 (Jul. 28, 1997). In this order, we treat the letters received from the LEC Coalition, USTA, and other LECs as requests for waivers.

16 *See infra* paras. 70-71.

17 *See infra* paras. 71,77-78, 80-82.

18 *See infra* para. 76.

19 *See infra* paras. 11-12 (discussing the payphone compensation requirements established in the *Payphone Orders* and the *Second Report and Order*). *See infra* paras. 86-98 regarding our findings with regard to requests to reconsider and waive the obligation to pay per-call payphone compensation during the waiver periods granted in the *Bureau Waiver Order* and this order.

Neither the *Bureau Waiver Order*, nor this order, waives the per-call compensation requirements of the *Payphone Orders* and the *Second Report and Order*. As required in the *Bureau Waiver Order*, payphones appearing on the LEC-provided lists of payphones are eligible for per-call compensation even if they do not transmit payphone-specific coding digits.[20] As required in the *Payphone Orders* and the *Second Report and Order*, absent a negotiated agreement, IXCs must pay per-call compensation of $0.284, for all calls they receive from payphones not otherwise compensated.[21] Payments must be remitted at least on a quarterly basis. The payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998. LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation.[22] There are no state or federal certification requirements.[23] Additionally, we recognize that there likely will be some disputes between IXCs and PSPs about the true number of compensable calls. These disputes should not be a basis for delay of payphone compensation payments. Because LECs and IXCs have identified problems in transmitting and receiving payphone-specific coding digits, a retroactive adjustment (true-up) of payphone compensation may be necessary for the waiver periods granted in the *Bureau Waiver Order* and this order.[24] We will address true-up requirements for payphone compensation, if any, in a subsequent order in this proceeding. In addition, we do not address in this order AT&T's request, in response to the *Bureau Waiver Order*, that it and similarly situated IXCs receive a waiver to pay per-phone rather than per-call compensation for payphones that do not provide payphone-specific coding digits.[25] We will address AT&T's request in a subsequent order. Although we intend to issue this order in the near future, the timing of this order in

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20 *Bureau Waiver Order*, 12 FCC Rcd 16,390-91, paras. 9-14.

21 *See infra* paras. 11-12 (discussing the payphone compensation requirements established in the *Payphone Orders* and the *Second Report and Order*).

22 *See Order on Reconsideration*, 11 FCC Rcd 21,293, paras. 131-32.

23 *Id.*

24 *See Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1073-75 (D.C. Cir. 1992); *Public Utils. Comm'n of California v. FERC*, 988 F.2d 154, 162-63 (D.C. Cir. 1993).

25 Letter from E.E. Estey, Government Affairs Vice President, AT&T to John B. Muleta, FCC (Oct. 14, 1997). The *Public Notice* also sought comment on a request received from AT&T in response to the requirements of the *Bureau Waiver Order*. *Public Notice* at 1. AT&T states that it cannot comply with the waiver as granted and proposes an alternative method to enable AT&T and other similarly situated IXCs to comply with the Commission's payphone compensation requirements and the *Bureau Waiver Order*. *See* AT&T Petition at 1-2. Because it states that it is unable to perform database matches of "07" coded calls, AT&T requests that the waiver be modified to allow AT&T to pay compensation on a per-phone basis based on the formula that the Commission develops for interim compensation. *Id.* AT&T states that its ability to perform its obligations under the Commission's *Payphone Orders* is "severely prejudiced by the Bureau's waiver order" because AT&T "cannot track payphone calls on a per-call basis for the majority of payphone calls that require compensation during the waiver period." *Id.* at 2. In response to the *Bureau Waiver Order*, AT&T proposes that the Commission permit carriers to use the per-phone compensation method to calculate a carrier's payment obligations during the waiver period for payphones that do not deliver the necessary identification digits. AT&T also requests that the Commission require each LEC to provide the Commission and carriers with a list of the offices that currently can deliver payphone digits, and a schedule of the dates by which the LECs other equal access end offices will be capable of delivering specific payphone identification digits.

no way relieves or delays the obligation of IXCs to pay compensation on April 1, 1998.

5. The waivers granted herein are effective immediately in order to ensure that all PSPs continue to receive per-call compensation, as required by the *Payphone Orders*. Without these waivers, many PSPs would not receive per-call compensation, because the LECs servicing them are not yet able to provide the required payphone-specific coding digits. The immediate implementation of this waiver is crucial to the Commission's efforts to ensure fair compensation for all PSPs, encourage the deployment of payphones, and enhance competition among payphone providers, as mandated by Section 276.

6. In addition, we deny the petition for reconsideration of the *Bureau Waiver Order* filed by International Telecard Association ("ITA") and the petition for waiver of compensation obligations filed by AirTouch Paging ("AirTouch").[26]

II. BACKGROUND

A. *Payphone Compensation*

7. In the *Payphone Orders*,[27] the Commission adopted new rules and policies governing the payphone industry to implement Section 276 of the Act. Those rules and policies in part: (1) establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[;]"[28] and (2) discontinue LEC intrastate and interstate carrier access charge service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange services.[29] Prior to the *Payphone Orders*, PSPs received no revenue for originating certain calls (*i.e.*, for subscriber 800 and other toll-free number calls) and could not block callers from making some of these calls (*e.g.*, access code calls). Based on evidence in the record, the Commission noted in the *Report and Order* that the number of these types of calls completed from payphones had proliferated in the past several years,[30] and concluded that PSPs must be compensated, pursuant to Section 276 of the Act, for access code, subscriber 800, and other toll-free number calls, whether they are jurisdictionally intrastate or interstate.[31]

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[26] *See* International Telecard Association ("ITA") Petition for Reconsideration, filed November 6, 1997 ("ITA Petition"), and AirTouch Paging ("AirTouch") Petition for Waiver, filed December 15, 1997 ("AirTouch Petition").

[27] *Report and Order*, 11 FCC Rcd at 20,541; *Order on Reconsideration*, 11 FCC Rcd at 21,233.

[28] 47 U.S.C. § 276(b)(1)(A).

[29] 47 U.S.C. § 276(b)(1)(B).

[30] *See Report and Order*, 11 FCC Rcd at 20,568, para. 52 n.187.

[31] *See id.* at 20,568, para. 52. An "access code" is a sequence of numbers that, when dialed, connect the caller to the operator service provider ("OSP") associated with that sequence, as opposed to the OSP presubscribed to the originating line. Access codes include 800 numbers, 10XXX and 101XXXX in equal access areas and "950" Feature Group B dialing (950-10XXX or 950-1XXX) anywhere, where the three digit XXX or four digit XXXX denotes a particular IXC. *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7

8. In the *Report and Order*, the Commission noted that the 1996 Act erects a "procompetitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[32] Thus, the Commission sought to advance the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public . . . ,"[33] by eliminating the effects of some of the long-standing barriers to full competition in the payphone market. To effectuate this objective, the Commission concluded that it would continue to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.[34]

9. In the *Report and Order*, the Commission concluded that the payphone marketplace has low entry and exit barriers and likely will become increasingly competitive,[35] and that the market generally is best able in the long term to set the appropriate price for payphone calls, including local coin calls.[36] In the *Payphone Orders*, the Commission concluded that the appropriate per-call compensation amount, in the absence of a negotiated agreement, ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation rate for those calls.[37] The Commission further concluded that if a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the Commission found the costs of originating various types of payphone calls such as access code and subscriber 800 calls to be similar

FCC Rcd 3251, 3251 n.1 (1992) ("*OSP Second Report and Order*"). "Subscriber 800 calls" consist of calls to an 800 number assigned to a particular subscriber. *See Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996) ("*NPRM*"). In this order, subscriber 800 encompasses toll-free subscriber calls, including 888 numbers. *See Toll Free Service Access Codes*, 11 FCC Rcd 2496 (1996). *See also Second Report and Order* at para. 2.

32 S. Conf. Rep. No. 104-230, 104th Cong. 1 (1996).

33 47 U.S.C. § 276(b)(1).

34 A number of parties subsequently filed petitions requesting that the Commission reconsider or clarify the rules the Commission adopted in the *Report and Order*. In the *Order on Reconsideration*, the Commission substantially affirmed the rules adopted in the *Report and Order*. The Commission denied all but two of the requested reconsiderations; those exceptions are not at issue here. In the *Order on Reconsideration*, the Commission modified: (1) the requirements for LEC tariffing of payphone services and unbundled network facilities; and (2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. *See Order on Reconsideration*, 11 FCC Rcd at 21,234, para. 3.

35 *See Report and Order*, 11 FCC Rcd at 20,547, para. 11.

36 *See id.* at 20,567, 20,577, paras. 49, 70.

37 *See id.* at 20,577, para. 70; *Order on Reconsideration*, 11 FCC Rcd at 21,242, para. 15. The Commission defined "fair compensation" as the amount to which a willing seller (*i.e.*, PSP) and a willing buyer (*i.e.*, customer, or IXC) would agree to pay for the completion of a payphone call. *Report and Order*, 11 FCC Rcd at 20,568, para. 52 n.187.

to the costs incurred when initiating a local coin call.[38]

10. Before moving to a local coin call default rate, however, the Commission found that it was necessary to observe over time how the payphone marketplace would function in the absence of regulation. The Commission recognized that competitive conditions, which are a prerequisite to a deregulatory market-based approach, did not exist yet, and would not be achieved instantaneously. Therefore, the Commission established an interim compensation plan to ease the transition to market-based local coin rates and to ensure fair compensation for coin and noncoin calls.[39]

11. In the *Payphone Orders*, the Commission established a two phase interim plan to address coin calls[40] and a two-year interim plan for payphone compensation for subscriber 800 and access code calls, based on a rate of $0.35 per call, beginning November 7, 1996. Under the first phase of interim compensation, the Commission required IXCs with annual toll revenues in excess of $100 million to pay, collectively, a flat-rate compensation amount of $45.85 per payphone per month[41] in shares proportionate to their share of total market long distance revenues. During the second phase of interim compensation, which is the first year of per-call compensation, all IXCs were required to pay $0.35 per subscriber 800 call or access code call unless they negotiated with the PSP to pay a different amount.[42]

12. In *Illinois Public Telecomm.*, the court affirmed many aspects of the Commission's *Payphone Orders*, but it vacated, among other things: (1) the default per-call compensation rate the Commission had set for subscriber 800 and access code calls at the same market-based $0.35 rate as for local coin calls; (2) the requirement that only those IXCs with annual toll revenues over $100 million pay PSPs for these calls during the first year of the interim period.[43] The court held that the Commission had not justified its conclusion that the costs of local coin calls were similar to those of subscriber 800 and access code calls, and it remanded that issue, among others, to the Commission for further proceedings.[44]

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38 *See Report and Order*, 11 FCC Rcd at 20,577-78, para. 70; *Order on Reconsideration*, 11 FCC Rcd at 21,268-69, para. 71.

39 *Report and Order*, 11 FCC Rcd at 20,566-73, paras. 52-62; *Second Report and Order* at para. 122.

40 *See Report and Order*, 11 FCC Rcd at 20,572, para. 60-61.

41 This compensation amount is based on an average of 131 subscriber 800 and access code calls per month at the default rate of $0.35 per call.

42 In the *Second Report and Order*, the Commission noted that the deregulated coin rate is $0.35 per call in five of the seven states that had deregulated the local coin rates, (Michigan, Iowa, Nebraska, North Dakota and Wyoming), and in two states (Montana and South Dakota) the rate is $0.25. *See Ex Parte Presentation* to FCC from Michael Kellogg, LEC Coalition (Sept. 26, 1997).

43 *Illinois Public Telecomm.*, 117 F.3d at 558.

44 *Id.* at 564.

After receiving comment on this and other issues,[45] the Commission adopted the *Second Report and Order*, establishing a default compensation rate of $0.284 per call absent a negotiated agreement, for subscriber 800 and access code calls, and inmate and 0+ calls. This rate was calculated by adjusting the market-based local coin rate to account for cost differences between local coin calls on the one hand, and subscriber 800 and access code calls on the other.[46] The Commission also extended the default per-call compensation period from one to two years, for the first two years of per-call compensation, *i.e.*, from October 7, 1997 until October 6, 1999, to allow participants, including IXCs, LECs, and PSPs, additional time to adjust to market-based payphone compensation for subscriber 800 and access code calls.[47]

B. *Payphone-Specific Coding Digits*

13. In the *Payphone Orders*, the Commission imposed a requirement that, by October 7, 1997, LECs transmit payphone-specific coding digits to PSPs, and that PSPs transmit those digits from their payphones to IXCs.[48] The provision of payphone-specific coding digits is a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls.[49] The *Report and Order* required that LECs provide coding digits to enable the identification of payphones.[50] The Commission also required IXCs to implement methods to track payphone calls.[51] In the *Order on Reconsideration*, the Commission clarified that for payphones to be eligible for compensation, "payphones

45 *See Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding*, CC Docket No. 96-128, DA 97-1673 (rel. Aug. 5, 1997) (*"Remand Notice"*).

46 *Second Report and Order* at paras. 42-67. The Commission has consistently expressed: (1) the benefits of a market-based approach to payphone compensation; and (2) why it relied on the deregulated market-based local coin rate as a market surrogate used as the starting point for adjusting for differences in costs for subscriber 800 and access code calls. *See Report and Order*, 11 FCC Rcd at 20,576-79, paras. 67-73; *Order on Reconsideration* 11 FCC Rcd at 21,258, paras. 50, 21 & 21,266-69, paras. 66-71; *Second Report and Order* at paras. 23-28, 42, 44.

47 The default per-call rate is the rate that applies in the absence of a negotiated agreement between parties during the first two years of per-call compensation. Thereafter, the default rate, in the absence of a negotiated agreement, is the market-based local coin rate less $0.066. For coinless payphones, $0.284 will continue to be the per-call default rate, absent a negotiated agreement. *Second Report and Order* at para. 1 n. 1.

48 *See Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

49 *Id.*

50 *Report and Order*, 11 FCC Rcd at 20,591, para. 98. In the *Report and Order*, the Commission concluded that each payphone should be required to generate "07" or "27" coding digits within the ANI for the carrier to track calls. The Commission noted that under the Commission's rules, LECs are required to federally tariff originating line screening services that provide a discrete code to identify payphones that are maintained by non-LEC providers. The Commission concluded that LECs should be required to provide similar coding digits for their own payphones. *Id.*

51 *Id.* at 20,590-91, paras. 96-97.

will be required to transmit specific payphone coding digits."[52] The Commission further clarified that each payphone must transmit coding digits that "specifically identify it as a payphone, and not merely as a restricted line."[53] Finally, that order clarified that LECs must make available to PSPs, on a tariffed basis, such coding digits as part of their ANI for each payphone.[54] Pursuant to these requirements, the LECs and PSPs were required to provide this information needed by IXCs to identify compensable calls from payphones for per-call compensation.

14. Because, in some cases, LECs and PSPs were not prepared to provide coding digits and IXCs were not prepared to track individual calls by October 7, 1997, USTA, the LEC Coalition and TDS requested waivers of the October 7, 1997 date.[55] On October 7, 1997, we provided, on our own motion, a limited waiver until March 9, 1998, for those payphones from which the necessary coding digits to identify individual payphone calls were not provided.[56] We noted that sixty percent of payphones already transmit unique coding digits.[57] The limited waiver was to afford LECs, IXCs, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation as required by Section 276 of the Communications Act to ensure compensation for each call from a payphone.[58] This limited waiver applies to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXCs for subscriber 800 and access code calls. We stated that an immediate waiver was necessary to begin per-call compensation on October 7, 1997, in keeping with the Commission's mandate under Section 276 of the Communications Act to ensure compensation for each call from a payphone.[59] We required, however, that LECs and PSPs capable of transmitting coding digits for some or all of their serving area remain obligated to do so.[60] Although we granted a waiver on our own motion in the *Bureau Waiver Order*, we recognized in that order that USTA, the LEC Coalition, and TDS filed petitions for waiver of the payphone-specific coding digit requirements.

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[52] *See Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

[53] *Id.*

[54] *Id.* at 21,265-66, para. 64.

[55] *See supra* note 15.

[56] *See Bureau Waiver Order*, 12 FCC Rcd at 16,387-88, para. 2.

[57] LEC Coalition Petition at 2. The Coalition states that forty percent of the payphones in its territories are "smart" payphones that do not transmit unique payphone coding digits. These payphones, largely used by independent PSPs, transmit a "07" coding digit that merely identifies a payphone call as coming from a restricted line. The remaining payphones are "dumb" payphones that rely on LEC switches for functions and features, and, as a result, already transmit unique payphone coding digits. *Id.* at 2, 4, 5.

[58] 47 U.S.C. § 276.

[59] *See Bureau Waiver Order*, 12 FCC Rcd at 16,387-89, paras. 2, 5 (citing 47 U.S.C. § 276).

[60] *Bureau Waiver Order*, 12 FCC Rcd at 16,388, para. 3.

We subsequently sought comment on those requests, which we address in this order.[61] In response to the *Bureau Waiver Order*, ITA filed for reconsideration of, and AirTouch requested a waiver of, the per-call compensation payment obligation during the waiver period.

15. In addition, in response to the *Public Notice*, APCC, USTA, and SNET request that the Commission clarify the LEC obligations and tariff requirements, the timetable for implementation, how the provision of payphone-specific coding digit service should be tariffed, and the payphone compensation scheme during the waiver period.[62] We address below the payphone-specific coding digit requirement, the tariffing and cost recovery requirements, waiver requests from USTA, the LEC Coalition, and TDS, the *Bureau Waiver Order*, and the petitions filed by ITA and AirTouch.

III. CLARIFICATION OF PAYPHONE-SPECIFIC CODING DIGIT REQUIREMENTS

A. *Statement of the Problem*

16. Since the release of the *Order on Reconsideration*, LECs, PSPs, and IXCs have disagreed on the appropriate method for providing the payphone-specific coding digits that both complies with the order, and provides the information necessary for IXCs to track and pay per-call compensation pursuant to the *Payphone Orders*.[63] For the implementation of per-call compensation, where IXCs must pay PSPs for each and every call from a payphone not otherwise compensated, the IXC must be able to identify that the call came from a payphone. LECs have responded to the requirements of the *Payphone Orders* by proposing to implement either LIDB or FLEX ANI,[64] while IXCs generally have argued that only FLEX ANI complies with the requirements of the *Payphone Orders*.[65] All of the Bell Operating Companies (BOCs) and GTE state that they either will have implemented FLEX ANI by March 9, 1998, pursuant to the *Bureau Waiver Order*, or are in the process of implementing FLEX ANI and will need

61 *Pleading Cycle Established for Petitions to Waive Payphone Coding Digits, Public Notice*, 12 FCC Rcd 17340 (1997) (*Public Notice)*.

62 APCC Comments at iii, USTA Reply at 2; SNET Reply at 1, 5.

63 APCC at Comments at 15-17; USTA Petition at 8; Letter from Robert H. Castellano to William F. Caton, (Aug. 14, 1997); Letter from Michael K. Kellogg, LEC Coalition, to Robert H. Castellano, AT&T, and Leonard S. Sawicki, MCI (Sept. 10, 1997). The LEC Coalition notes that AT&T stated in May, 1997 that AT&T central office switches would be unable to support Flex ANI, while in August, 1997 AT&T stated that it was able to overcome the technical problems associated with the receipt of FLEX ANI. The LEC Coalition also states that MCI stated before its August 13, 1997 letter that free line information database (LIDB) service would be sufficient. Letter from Michael K. Kellogg, LEC Coalition, to Richard H. Rubin, AT&T, (Sept. 22 1997) at 4. *See also* Letter form E. Estey, AT&T, to Regina Keeney, FCC (May 23, 1997); AT&T and MCI letter to LEC ANI Coalition (Aug. 13, 1997).

64 SNET Reply at 1; USTA Reply at 4.

65 MCI Reply at 2; WorldCom Reply at 3-4.

a further extension of time.[66] USTA claims, however, that implementing FLEX ANI will be very costly and burdensome for midsize and small LECs.[67]

B. *Methods for Identifying Payphone Calls*

17. A toll-free call transmitted by a LEC to an IXC generally carries with it billing information codes, called ANI, which is usually the billing number associated with the originating line supplied by the LEC that assists the IXC in properly billing the call.[68] Several methods are available to enable IXCs to identify payphone calls as originating from payphones. Using a listing or file of payphone originating numbers (LEC ANI lists) allows identification that a call originated from a payphone after the call is completed.[69] There are also several automated methods that enable the identification of payphone calls while the call is being set up. These include: ANI ii, FLEX ANI, LIDB, and IXC databases.

1. LEC ANI lists

18. ANI lists are used by IXCs after the call is completed to match the call information (ANI) received with the call (usually the calling number) with the LEC list of payphone numbers (ANIs) in a LEC's serving area in order to identify that the call came from a payphone. These lists are used after a call is completed to perform billing and pay compensation.[70] ANI lists are not useful in real time while the call is "live."

2. ANI ii

19. In most cases, when the IXC subscribes to Feature Group D (FGD access), LECs currently provide along with the billing number (ANI), the ANI ii, which identifies calls coming from certain payphones. ANI ii is a widely used technology that sends a two-digit code along with the ANI.[71]

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66 *See, e.g.*, Ameritech states that it has FLEX ANI loaded in all of its digital switches and will have it loaded in its analog switches by the end of 1997. Ameritech states that it will complete the remainder of the process by March 9, 1998, Ameritech Comments at 2. Letter from Ben G. Almond, BellSouth to John Muleta, FCC (Sept. 30, 1997); Letter from F. Gordon Maxson, GTE, to John Muleta, FCC (Jan. 16, 1998). Bell Atlantic states that it will implement FLEX ANI by March 9, 1998. Bell Atlantic Comments at 1-2. Letter from Michael Kellogg, LEC Coalition to Rose Crellin, FCC (Feb. 5, 1998).

67 Letter from Keith Townsend, USTA to William Caton, FCC (Oct. 24, 1997).

68 *See supra* note 2.

69 Some IXCs use a clearinghouse to perform this function. ANI lists can be used as a means of identifying calls for payphone compensation in the absence of payphone-specific coding digits. *See Report and Order*, 11 FCC Rcd at 20,597 at para. 112; *Bureau Waiver Order*, 12 FCC Rcd at 16390, para. 9.

70 *Report and Order*, 11 FCC Rcd at 21,284, para. 112; *Order on Reconsideration* 11 FCC Rcd at 21,284, paras. 111-13.

71 *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket No. 91-35, Third Report and Order, 11 FCC Rcd 17,021, 17,032 at para. 19 (1996) (*OLS Service Order*).

Five codes are currently available through the conventional ANI ii methodology. The transmitted ANI ii codes, hardwired as part of the switch's generic software, identify the call as "27" if the call is from a "dumb" payphone or "07" for a restricted line, which includes "smart payphones" as well as other types of calls, such as hotel calls.[72] Thus, ANI ii provides, along with the billing number, a unique coding digit identifying dumb payphones with the "27" code, but not providing a unique coding digit identifying smart payphones, which are identified with the "07" coding digit that also identifies other calls such as hotel and hospital calls. Because the payphone-specific coding digit is not available for a payphone call that is coded with the "07" number, call tracking is difficult using conventional ANI ii.[73] Additional ANI ii codes to enable unique identification of smart payphones can be hardcoded into LEC switch software, but this requires substantial vendor involvement and may be very costly.[74] New codes cannot be added to ANI ii without developing a switch generic or switch release and installing it into each switch.[75]

3. FLEX ANI

20. FLEX ANI, which is a switch software feature, enables the transmission of a number of additional coding digits with a call that can, *inter alia*, uniquely identify a call as coming from a payphone. FLEX ANI codes are generated in end office databases and FLEX ANI is more flexible and easily modified to add additional coding digits than conventional ANI ii.[76] When FLEX ANI codes are available, they are outpulsed with the call, instead of the embedded hardcoded ANI ii digits.[77] FLEX ANI enables the assignment of more two digit codes (potentially 00-99) for payphones in addition to the "27" code already provided by ANI ii, including "29" for prison/inmate payphones and "70" for "smart" payphones.[78] FLEX ANI is deemed flexible because new codes can be added to each end office database

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72 The "27" coding digit identifies a coin line (a smart line) that generally is used with "dumb" payphones, which are primarily owned by LECs. The coin line rates the call, announces the charge, interrupts the call for coin deposit, terminates the call if coins are not deposited, and controls the acceptance and return of coins. Coin line calls are automatically routed to an operator switch that provides the intelligent functionality. Letter from Michael K. Kellogg, LEC Coalition to William F. Caton, FCC (Oct. 2, 1997) at 2. The "07" coding digit, which also identifies other calls such as hospital and hotel calls on a restricted line, is used to identify "smart" payphones. "Smart" payphones are connected to "dumb lines" that do not perform the coin and control functions performed by the "smart lines" to which dumb payphones ("27" coding digit) are connected. The smart payphone has the intelligence within the payphone that performs the rating, announcement of rates, coin acceptance and return, as well as accounting in some cases. *Id.*

73 Letter from Leonard Sawicki, MCI to William F. Caton, FCC (April 18, 1997).

74 Letter from Keith Townsend, USTA to Michael Carowitz, FCC (July 28, 1997).

75 *Id.*

76 *See OLS Service Order,* 11 FCC Rcd at 17,032, para. 19; Letter from Keith Townsend, USTA to Michael Carowitz, FCC (July 28, 1997).

77 *Open Network Architecture User's Guide*, June 1996 at 92.

78 FLEX ANI codes are developed and assigned through proceedings of industry fora, such as the North American Numbering Committee. The coding digit "70" is used for non-network controlled payphones (smart payphones on dumb lines) owned by LEC and nonLEC PSPs. The coding digit "29" is used to identify prison/inmate

with the installation of new switch software. FLEX ANI is not available on non-equal access switches, but is resident on many equal access switches where it must be activated ("turned on") as a software capability.[79] FLEX ANI requires a one time switch implementation per end office and associated trunk translations for each IXC, which ensure that the payphone-specific code will transfer thereafter with all calls from payphones.[80] The major costs involved in implementing FLEX ANI are the initial generic software upgrades if necessary, activating the software, and provisioning end office trunks to provide the service to each IXC. Using FLEX ANI, IXCs can identify the call as a payphone call for call tracking, pay per-call compensation for the call, bill for the call based on the information provided with the call, and block the completion of the call if requested by the customer.[81] By arrangement with their serving LECs, however, IXCs must condition their trunks to receive FLEX ANI.[82]

4. LIDB and IXC Databases

21. LIDB is provided through regional databases called service control points (SCPs).[83] To identify that a call providing a "07" coding digit originated from a smart payphone, an IXC must first either query the LIDB or an internal database. Thus, during the call, when an IXC receives a "07" coding digit for a call, the IXC must send a query to the LIDB database for that call, and LIDB must look up the number of the calling party and match it to lists of numbers for payphones. LIDB then provides the IXC with the digit code that identifies whether the call originated from a payphone as opposed to a hospital or hotel phone.

22. Finally, IXCs can develop their own databases that are similar to the LIDB database and contain the telephone numbers for payphones that IXCs can use to identify whether a call is from a payphone. Then, when an IXC receives a call with an "07" indicator, the IXC sends a query to its own payphone database to identify whether a call originated from a payphone.

C. *Discussion*

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payphones, which include outward call screening. *See* Letter from Marie Breslin, Bell Atlantic to William F. Caton, Acting Secretary, FCC at 2 (Dec. 18, 1997). Flex ANI is provided by each end office and on a Carrier Identification Code (CIC) basis. *See* SWBT FCC Tariff No. 73, July 1, 1994 at 6-65. A CIC is the numeric code that enables a LEC providing interstate interexchange access services to identify the IXC through which the caller wishes to transmit its interstate call. LECs use the CICs to route traffic to the proper IXC or other access customer and to bill for the interstate access service provided. *Petitions for Waiver of the Four-Digit Carrier Identification Code (CIC) Implementation Schedule*, DA 97-2717 (Com. Car. Bur. Dec. 31, 1997).

79 *See* Letter from Keith Townsend, USTA, to John Muleta, FCC (Oct. 24, 1997).

80 *See* Letter from Michael Kellogg, LEC Coalition to Richard H. Rubin, AT&T (Sept. 22, 1997).

81 *See* Letter from Robert H. Castellano, AT&T to William F. Caton, FCC (Aug. 14, 1997).

82 *See* Letter from Michael Kellogg, LEC Coalition to Richard H. Rubin, AT&T (Sept. 22, 1997).

83 An SCP may contain a computerized database of information that can be accessed with the Signaling System 7 ("SS7") telephone network.

23. In response to the concerns raised by LECs, PSPs, and IXCs, we further clarify in this order the payphone-specific coding digit transmission requirement established in the *Payphone Orders*. We conclude that based on the plain language of the requirements of the *Order on Reconsideration*, the only methods discussed above that enable, along with the call ANI, the provision of all of the payphone-specific codes necessary to identify the call as originating from a payphone, and identify it as more than a restricted line, are FLEX ANI and hardcoding of ANI ii coding digits into the switch software. Currently, conventional ANI ii only transmits the "27" payphone-specific code that identifies dumb payphones, owned primarily by LECs.[84] To provide additional codes through conventional ANI ii, such as the "70" code that identifies smart payphones owned primarily by independent PSPs, LECs would have to develop generic switch software and load it into each switch. LECs indicate that the cost and time required to hardcode the switches for additional ANI ii codes are substantial.[85] Because we are not aware of any LEC planning to hardcode additional ANI ii payphone-specific coding digits in its switches in its serving area, and we are not aware of any IXC requesting that we adopt such an approach, we do not require this approach for the implementation of payphone-specific coding digits. We note, however, that a LEC may choose to employ hardcoding of additional ANI ii payphone-specific coding digits for all of the switches in its serving area in accordance with the requirements of the *Payphone Orders* as clarified herein. Thus, we conclude that all LECs must implement FLEX ANI to comply with the requirements set forth in the *Payphone Orders*, subject to any waivers provided herein. FLEX ANI provides, along with the billing number, the additional "70" and "29," as well as the "27" payphone-specific coding digit available through ANI ii, that enables IXCs to specifically identify a call as coming from a payphone.

24. FLEX ANI transmits coding digits as part of the caller information provided by a LEC with the call while the call is being placed in "real time," and specifically identifies the call as coming from a payphone.[86] Hardcoded ANI ii is the only other method that would have these characteristics, but in this proceeding no LEC has supported increasing the number of ANI ii digits (hardcoding) to comply with the Commission's payphone-specific coding digit requirements. USTA has indicated that this would be a more costly approach than FLEX ANI. In addition, IXCs generally support the implementation of FLEX ANI. None of the other techniques complies with the requirements to transmit unique coding digits with a call ANI to determine if the call originates from a payphone in real-time while the call is "live." ANI lists cannot be used to determine if a call came from a payphone until

[84] *See* Letter from Michael Kellogg, LEC Coalition to William F. Caton, FCC (June 16, 1997).

[85] USTA estimate that hard coding additional ANI ii digits will cost $8,000 to $29,000 per switch, replacement of electro-mechanical switches, and upgrade of the digital non-equal access offices. Letter from Keith Townsend, USTA, to Michael Carowitz, FCC (July 28, 1997). USTA also indicates that a switch generic upgrade or new release would be required to hardcode additional ANI ii digits costing in the range of $125,000 to $500,00 per switch. *Id.* at 5. *See also* LEC Coalition Petition. AT&T initially stated that only hardcoding of additional ANI ii digits would be appropriate. Letter from E.E. Estey, AT&T to Regina M. Keeney, FCC (May 23, 1997). AT&T subsequently concluded FLEX ANI was the technique that should be used to provide payphone-specific coding digits. Letter from Robert H. Castellano, AT&T to William F. Caton, FCC (Aug. 14, 1997).

[86] Because FLEX ANI provides the payphone-specific coding digits with the call ANI in "real-time" while the call is live, an IXC can identify whether the call is from a payphone, where to bill the call, whether payphone compensation is due for the call, and whether to block the call at the request of the access code or subscriber 800 customer.

after the completion of a call. LIDB and individual IXC databases do not provide the coding digits identifying the call as coming from a payphone until after the IXC has queried a specific database to determine whether the call is from a payphone. This database query procedure must be performed on all calls designated with an "07" number, including, for example, hotel calls, requiring a large number of unnecessary database queries to identify calls originating from payphones,[87] Using LIDB or an IXC database, the payphone-specific coding digits are not outpulsed with the call ANI as in the operation of ANI ii and FLEX ANI, as required by the *Payphone Orders*. Moreover, based on analysis provided by USTA, it does not appear that the implementation of FLEX ANI, with certain exceptions, will be as onerous as LECs originally estimated.[88]

25. The provision of payphone-specific coding digits through FLEX ANI most closely resembles the automatic provision of payphone-specific coding digits for LEC dumb payphones, "27", which is already provided through the ANI ii resident in most equal access switches. Thus, by implementing FLEX ANI, LECs will provide payphone-specific coding digits in the same manner from "dumb" and "smart" payphones, thereby responding to any concerns that the codes for these two types of payphones are not being provided in a similar manner. By providing the payphone-specific coding digit though FLEX ANI rather than LIDB, the coding digit automatically is sent with every payphone call and does not require a database query for each "07," call which may or may not be a payphone call.[89]

26. IXCs generally interpret the *Payphone Orders* as requiring the provision of payphone-specific coding digits through FLEX ANI.[90] WorldCom argues that LECs must provide FLEX ANI because the option to choose FLEX ANI or LIDB provided by the Commission in the toll fraud proceeding for OLS service does not apply to the requirements of the Payphone proceeding and does not excuse LECs from the requirements of paragraph 64 of the *Order on Reconsideration*.[91] AT&T and MCI claim that LIDB does not comply with the *Payphone Orders*, because it does not pass a unique payphone-specific coding digit with ANI, but only an "07" code that requires a LIDB or other IXC database query.[92]

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87 *See* Letter from Richard H. Rubin, AT&T to Michael K. Kellogg, LEC Coalition at 4 (Sept. 29, 1997). Letter from Richard H. Rubin, AT&T to Michael K. Kellogg, LEC Coalition (Sept. 15, 1997).

88 Letter from Keith Townsend, USTA to William Caton, Acting Secretary, FCC (Oct. 24, 1997). USTA estimates a cost of $61.2 million for most of the switches if the switch generics have already been upgraded. *Id.*

89 IXCs have indicated that the necessity to do a database dip for each call from a restricted line "07" incurs additional cost and setup time for these calls. *See, e.g.*, MCI Reply at 2; AT&T Opposition, Oct. 7, at 4.

90 *See, e.g.*, MCI Reply at 2, 3 n.6; AT&T Comments at 1, 2, n.5; WorldCom Reply at 4; CompTel Comments at 2.

91 WorldCom Reply at 6.

92 MCI Reply at 2. MCI argues that the LECs' arguments are untimely petitions for reconsideration *Id.* at 3. See also AT&T Opposition, October 7, at 4. *See also* WorldCom Reply at 5; Sprint Comments at 4; Sprint Reply at 2; Frontier Comments at 6; MCI Comments at 4, 6-9; and WorldCom at 2-4, 7-8. AT&T Reply at 4. AT&T also claims that the language of the *Second Report and Order* supports a finding that FLEX ANI is required. *Id.* at 5 n.13. APCC notes that until May 23, 1997 AT&T insisted that FLEX ANI could not be supported (citing Letter from E.E. Estey, AT&T to Regina M. Keeney, FCC at 3 (May 23, 1997). APCC Comments at 8.

27. IXCs argue that the LEC provision of FLEX ANI is necessary to provide payphone-specific coding digits for several reasons. Pursuant to the requirements of the *Payphone Orders*, IXCs are required to track and pay per-call compensation.[93] IXCs state that they have built systems to accommodate the FLEX ANI coding digits and would have to make substantial investments to build additional systems to accommodate LIDB and the additional costs for such database queries.[94] CompTel states that carriers owing per-call compensation have spent millions of dollars and personnel time to prepare call processing, call recording and rating, and billing systems on the assumption that they would receive ANI digits uniquely identifying payphones.[95] MCI states that it is unable to use LIDB to determine whether subscriber 800 calls originate from payphones.[96] MCI asserts that LIDB would be costly for IXCs to implement, degrade the efficiency of the network because of the large number of LIDB queries, and would require 12 months for MCI to implement.[97]

28. Independent PSPs generally support the use of FLEX ANI to provide payphone-specific coding digits. APCC states that the advantages of FLEX ANI are that: (1) identification of payphone calls is more efficient; and (2) calls can be blocked.[98]

29. By March 9, 1998, the BOCs and GTE either will have already begun implementation of FLEX ANI, or will be capable of providing FLEX ANI. Some LECs, on the other hand, argue that LIDB satisfies the coding digit requirements of the *Payphone Orders* and that because

93 The Commission concluded that it is the responsibility of the IXC, whether it provides intraLATA or interLATA services, as the primary economic beneficiary of the payphone calls, to track the calls it receives from payphones, although the carrier has the option of performing the tracking itself or contracting out these functions to another party, such as a LEC or a clearinghouse. *Report and Order,* 11 FCC Rcd at 20,590-91, paras. 96-97.

94 Sprint states that it would require one year and millions of dollars to accommodate LIDB. Sprint Comments at 4; Sprint Reply Comments at 3. AT&T argues that to implement a LIDB based system would require $16-22 million and 18-24 months. AT&T Opposition, Oct. 7, 1997, at 6.

95 CompTel Comments at 2-3. CompTel argues that payphone coding digits have three purposes: 1) reject payphone calls; 2) surcharge payphone calls; and 3) billing purposes.

96 Letter from Mary J. Sisak, MCI to Michael Kellogg, LEC Coalition at 3 (Sept. 30, 1997).

97 MCI Reply at 3. MCI states that it would cost between eight million and 50 million dollars for vendor costs, and hardware and software upgrades to its operator software of six million dollars. Letter from Mary J. Sisak, MCI, to Michael Kellogg, LEC Coalition, at 3 (Sept. 30, 1997). *See also* Frontier Comments at 8.

98 APCC Comments at 15. Peoples argues that only FLEX ANI readily permits the identification of the PSP and allows IXCs to block calls. Peoples Reply at 3. APCC argues that PSPs should not be required to subscribe to specific FLEX ANI service, but that it should automatically be provided with payphone line service. APCC also argues that PSPs should also be able to obtain FLEX ANI separately. APCC states that with USTA's revised estimate of costs to implement FLEX ANI of $50-100 million, the implementation of FLEX ANI should not cost more than one cent per call. APCC Comments at 17. Peoples argues that since USTA has revised substantially its cost for FLEX ANI implementation, the Commission should require that all LECs implement FLEX ANI.. Peoples Reply at 3.

the toll fraud proceeding[99] allowed either FLEX ANI or LIDB to respond to the OLS requirement to provide coding digit information, either methodology should suffice to respond to the requirements of the *Payphone Orders.*[100] We have indicated in both proceedings that requirements adopted in one proceeding do not affect the requirements of the other.[101] The purpose of the toll fraud proceeding is distinct from the purpose of this proceeding—to implement Section 276 of the Act. Additionally, the requirements established in the orders in these proceedings are not the same. We have established requirements for IXCs and LECs with regard to payphone compensation, per-call tracking, per-call compensation, and the provision of payphone-specific coding digits that are very different from the OLS requirements established in the toll fraud proceeding.

30. We acknowledge, however, that both proceedings require LECs to provide coding digits with caller information. We also acknowledge that some LECs may have incorrectly interpreted the language of the *Payphone Orders* and some IXCs have vacillated on the method they prefer for the provision of payphone-specific coding digits to their networks. Moreover, we emphasize the importance in this proceeding of the availability of payphone-specific coding digits as part of the ANI of a call to fully implement the per-call compensation requirements of the *Payphone Orders.* Thus, we have

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[99] The Commission instituted CC Docket 91-35 (toll fraud proceeding) to implement the provisions of the Telephone Operator Consumer Services Improvement Act ("TOCSIA"). *Telephone Operator Consumer Services Improvement Act of 1990, which added Section 226 of the Communications Act of 1934*, Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226). Subsection 226(g), directed the Commission to require such actions as are necessary to ensure that aggregators are not exposed to undue risk of fraud, 47 U.S.C. § 226(g). In the toll fraud proceeding, the Commission required, among other things, that all LECs provide a federally tariffed originating line screening service (OLS) for fraud prevention that provides a discrete code to identify independent-owned payphones. OLS service gives an operator service provider ("OSP") information concerning the subscriber's line from which a call originates, that the OSP can use in processing the call. OLS service sends a two-digit code (potentially 00 through 99) that indicates the nature of the originating line to the OSP. The two methods that LECs are allowed to use to implement OLS screening services are FLEX ANI and LIDB. Some LECs have received temporary waivers of the requirement to provide OLS after demonstrating that it would not be "technically feasible or economically reasonable" to provide the service. *See Policies and Rules Concerning Operator Service Access and Pay Telephone Access and Pay Telephone Compensation*; Petitions Pertaining to Originating Line Screening Services, 12 FCC Rcd 14,857, 14,862-63, paras. 6-8. (Com. Car. Bur. 1996) (*OLS Waiver Order*).

[100] NTCA Reply Comments at 2-3 (arguing that the Commission has previously "recognized the public interest benefits of permitting LECs to satisfy technology requirements via the lowest cost and greatest efficiency" and that requiring FLEX ANI would slow implementation of payphone coding and unreasonably burden LECs); SNET Comments at 1 (supporting giving LECs a choice in technology selection); US West Reply at 2 (arguing that LIDB satisfies the requirement for payphone specific coding digits). SNET Comments at 1 (arguing that LIDB is sufficient to meet call tracking obligations of the IXCs). TDS Comments at 4 (TDS arguing that the language of paragraph 64 is far from clear and if the Commission had required a specific technology it would have said so). USTA notes that the Commission has recognized that the tracking capabilities of carriers vary and that the record in this proceeding establishes that LIDB meets the tracking requirements and should be accepted by the FCC. USTA Reply at 5. SNET argues that IXCs do not have to use LIDB for payphone compensation, when they can develop their own databases. SNET Reply at 4. TDS argues that paragraph 64 of the *Order on Reconsideration* refers back to the *Report and Order* at para. 98, which cites to the Third Report and Order in CC Docket No. 91-35. TDS Comments at 4 n.10. *See also* SNET Reply at 3.

[101] *See, e.g., Bureau Waiver Order*, 12 FCC Rcd at 16,391-92, para. 9, n.20; *OLS Waiver Order*, 12 FCC Rcd at 14,864, para. 12 n.28.

provided below time extensions for LECs needing additional time to implement FLEX ANI.[102] SNET requests that if we conclude that the provision of payphone-specific coding digits though LIDB does not comply with the requirements of this proceeding, as we do here, it should be relieved of its requirements pursuant to the toll fraud proceeding so that it can avoid spending further on LIDB implementation.[103] This request should be resolved in the toll fraud proceeding.

31. Because we conclude that hardcoding ANI ii payphone-specific coding digits and FLEX ANI, not LIDB, are the only approaches that comply with the requirements of the *Payphone Orders* for the provision of payphone-specific coding digits, we reject the claim that we should find that LIDB also complies with those requirements because the implementation of FLEX ANI is too costly for LECs.[104] USTA, SNET, and TDS argue that the cost of implementing FLEX ANI will be too burdensome and that LIDB is an economical method of complying with the requirement.[105] MCI asserts, however, that the Commission already has included the cost of this upgrade in the payphone compensation amount and thus the cost cannot be the basis for a waiver.[106] We conclude that mechanisms established by the Commission in the *Payphone Orders* and the *Second Report and Order*, and waivers we grant herein, respond to those concerns. In the *Payphone Orders*, the Commission required that the LECs provide the payphone-specific coding digits through tariffed services.[107] In the *Second Report and Order*, the Commission included estimated costs for implementing FLEX ANI in the per-call compensation default rate paid by IXCs to PSPs for dial around calls,[108] and we discuss below how LECs may recover those costs from PSPs through tariffs required by the *Payphone Orders*. We provide waivers in certain circumstances for LECs that are unable to recover their costs for FLEX ANI implementation in a reasonable time.

32. Finally, we clarify that the requirement to transmit payphone-specific coding digits applies only to payphone service provided by LECs to dumb, smart, and inmate payphones. It does not

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102 These waivers do not change the obligations of LECs pursuant to our requirements in the *OLS Service Order*, 11 FCC Rcd at 17,021.

103 SNET Reply at 3.

104 Such a revision to the requirements of the *Payphone Orders* is beyond the scope of this order.

105 *See* SNET Comments at 1; USTA Reply Comments at 10 (arguing that the Commission should not require specific per-call tracking methodology because small, rural, and midsize LECs would bear unnecessary administrative, technological, and financial burdens); Illuminet Comments at 2-3, 5 (arguing that technical solutions should not be limited, it should be allowed to choose the most economically rational method, and that it provides LIDB services to over 900 LECs). TDS Reply at 2 (TDS argues that it will cost $2,055,000 in order to install FLEX ANI in its equal access switches, approximately $2,700 per payphone).

106 MCI Reply at 2. In contrast, MCI contends that LECs do not argue that FLEX ANI or hardcoding is not feasible but only that it is more cost effective to use LIDB. *Id.* AT&T claims that the revised USTA estimate for LECs to implement FLEX ANI, $61.2 million for equal access switches, forecloses the claim that implementing FLEX ANI is prohibitively expensive. AT&T Opposition at 3.

107 *Report and Order*, 11 FCC Rcd at 21,284, para. 112; *Order on Reconsideration* 11 FCC Rcd at 21,284, paras. 111-13.

108 *Second Report and Order* at paras. 52-53.

apply to any other LEC provided service such as business lines, PBX, or Centrex lines to which a payphone may be connected.[109] US West requested that the Commission clarify whether LECs, such as US West, are required to provide payphone-specific coding digits to all types of telecommunications lines that might possibly be connected to a payphone or solely to those payphones that are connected to payphone lines.[110] US West contends that it interpreted the Commission's coding digit requirements to require US West to provide such digits solely to those payphones connected to payphone lines. According to US West, two states within its calling area, Minnesota and Iowa, permit PSPs to purchase lines other than specifically identified payphone lines, in US West's case, Public Access Lines (PALs). For example, in Minnesota, PSPs can employ business lines in lieu of PALs. US West contends that an expansion of the coding digit requirement to include these lines would significantly increase the cost and time to implement FLEX ANI, due to increased translation costs.[111] US West further argues that if the coverage of FLEX ANI for per-call compensation purposes is to include all lines that could be connected to a payphone, FLEX ANI implementation will be delayed significantly.

33. As discussed above, in this *Order*, we conclude that LECs must implement FLEX ANI to comply with the requirements set forth in the *Payphone Orders*, subject to any waivers we provide herein. At this time, we clarify, however, that LECs are required to provide payphone-specific coding digits only from those payphones that are connected to tariffed payphone lines (for dumb, smart, and inmate payphones) as compared with, for example, payphones connected to business or Centrex lines. The *Payphone Orders* specifically required that payphone lines be available in every state; thus illustrating

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109 In the *Payphone Orders*, the Commission defined a payphone as "any telephone made available to the public on a fee-per-call basis, independent of any commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a calling card." *Report and Order*, 11 FCC Rcd at 20,567, para. 66. In the *Order on Reconsideration*, the Commission clarified that this definition of "payphone" excludes from the compensation mechanism phones in hotel rooms, dormitory rooms, or hospital rooms. *See Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64. In addition to this general definition, the Commission noted that it previously adopted a definition of "payphone" in the access code call compensation proceeding for purposes of the billing and collection of the compensation in that proceeding. *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736 (1991) (*First Report and Order*). The Commission concluded that payphones appearing on the LEC-provided customer-owned, coin-operated telephone ("COCOT") lists were payphones that are eligible for compensation. *Reconsideration Order*, 8 FCC Rcd at 7156-57. The Commission further stated that if a payphone provider does not subscribe to an identifiable payphone service, or if its payphone is omitted from the COCOT list in error, the provider is required to provide alternative verification information to the IXC paying compensation. The Commission concluded in the *Report and Order* that this definition of "payphone," regardless if the payphone in question is independently provided or LEC provided, would be sufficient for the payment of compensation as mandated by Section 276 and the instant proceeding. *Report and Order*, 11 FCC Rcd at 20,567 para. 66. Subsequently, in the *Order on Reconsideration*, the Commission clarified its definition of a payphone. 11 FCC Rcd at 21265-66, para. 64. In that order, the Commission explained that once per-call compensation became effective, payphones would be required to transmit payphone-specific coding digits to be eligible for such compensation. *See Id.*

110 *See* Letter to Robert W. Spangler, Acting Chief, Enforcement Division, Common Carrier Bureau, FCC from James T. Hannon, Senior Attorney, U S West (Feb. 25, 1998).

111 *See id.* at 2.

that the Commission contemplated that coding digits would be sent over such lines.[112] The *Payphone Orders* did not intend to require that LECs provide payphone-specific coding digits to all types of lines to which a payphone could conceivably be attached. To reach such a result, and require that LECs provide payphone-specific coding digits to a plethora of different types of LEC service lines, would be unduly burdensome, resulting in increased FLEX ANI implementation costs for translations and delays in the implementation of FLEX ANI. Moreover, because LECs often do not know when a payphone is attached to business lines or PBX lines, requiring the provision of FLEX ANI for those payphones would result in increased complexity and possibility of error in identifying payphones. In the *Bureau Waiver Order*, we stated that payphones appearing on the LEC-provided lists of payphones (LEC ANI lists) will be eligible for per-call compensation even if they do not transmit payphone-specific coding digits. Although payphones on the LEC ANI lists are eligible for per-call compensation during the waiver period of the *Bureau Waiver Order*, and this order, to ensure an orderly transition to the provision of FLEX ANI for all payphones on LEC payphone service lines, not just any LEC service line, PSP payphones must be on LEC payphones lines within 30 days of the release of this order to continue to be eligible for per-call compensation, even if the PSP payphones are on the LEC ANI lists.

IV. TARIFFING AND COST RECOVERY

A. *Introduction*

34. In response to the concerns raised by LECs, PSPs, and IXCs, we further clarify in this order the tariffing requirements for the provision of payphone-specific coding digits established in the *Payphone Orders*. The *Order on Reconsideration* required that LECs "must make available to PSPs, on a tariffed basis, such coding digits as part of the ANI for each payphone."[113] In the *Second Report and Order*, we included the estimated cost of providing coding digits in the per-call default compensation rate to be paid by IXCs to PSPs for subscriber 800 and access code calls.[114] In this order, we further clarify the tariffing and cost recovery requirements established in those orders.

B. *Availability of Coding Digits to IXCs*

35. To comply with the requirements of the *Payphone Orders*, LECs must provide FLEX ANI to IXCs through their interstate tariffs, so that IXCs can identify which calls come from payphones.[115] The LEC Coalition, Bell South, and Bell Atlantic have proposed that LECs modify their

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[112] *See Order on Reconsideration*, 11 FCC Rcd at 21,308, paras. 162-63.

[113] The *Bureau Waiver Order* extended that period for LECs that were unable to provide coding digits until March 9, 1998. 12 FCC Rcd at 16,387, para. 1.

[114] *Second Report and Order* at paras. 52-53.

[115] *See also supra* n. 9. BellSouth and Bell Atlantic have filed revisions to their interstate tariffs to provide FLEX ANI to IXCs for payphone compensation. Bell South Transmittal No. 426, October 3, 1997; Bell Atlantic Transmittal No. 1026 and NYNEX Transmittal No. 483, Jan. 30, 1998. The transmission of payphone-specific coding digits through FLEX ANI for the purpose of payphone compensation requires only the transmission of coding digits to identify payphones, *i.e.*, "27," "70," and "29." LECs, PSPs, and IXCs can make arrangements to transmit other FLEX ANI coding digits, but the transmission of coding digits beyond those necessary to identify payphones

interstate access tariffs to provide that IXCs may request FLEX ANI without charge if it is for the purpose of complying with the per-call compensation requirements of the *Payphone Orders*.[116] The LEC Coalition also proposes that LECs recover the costs of providing FLEX ANI to IXCs for payphone compensation from PSPs through a new federal rate element to be applied to all payphone lines on a nondiscriminatory basis.[117] That proposed rate is to be charged monthly on a per-line basis until the costs for implementation of FLEX ANI for payphone compensation are recovered.[118] We conclude that this approach is consistent with the tariff requirements of the *Payphone Orders*.[119] PSPs will pay the costs incurred by LECs to implement FLEX ANI for payphone compensation through the rate applied to all payphones by the LECs. LECs must provide FLEX ANI to IXCs and the IXCs are charged for this service through the per-call payphone compensation rate which IXCs pay to PSPs. Thus, IXCs will not be charged directly for this service by the LECs.[120]

36. Thus, LECs must file revisions to their interstate access tariffs to reflect FLEX ANI as a nonchargeable option available to IXCs no later than March 31, 1998, for areas for which FLEX ANI is available, if FLEX ANI is available for 25% or more of the smart payphones in its service area.[121] Thereafter, within the waiver period it is granted in this order, a LEC must file its FLEX ANI tariff to provide FLEX ANI to IXCs no later than when it is able to provide FLEX ANI to 25% or more of the smart payphones in its service area. Beginning March 27, 1998, until a LEC has implemented FLEX ANI for all payphones it serves, it must provide monthly to IXCs and PSPs, upon request, information on: (1) end offices where FLEX ANI is available; and (2) proposed dates for the availability of FLEX ANI by

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are not required for the purpose of payphone compensation. *Report and Order*, 11 FCC Rcd at 21,284, para. 112; *Order on Reconsideration*, 11 FCC Rcd at 21,284, paras. 111-13.

116 Letter from Michael K. Kellogg, LEC Coalition, to Robert Spangler, FCC at 2 (Dec. 18, 1997). The LEC Coalition states that Ameritech, Bell Atlantic, BellSouth, Pacific Bell, Nevada Bell, and Southwestern Bell would provide FLEX ANI digits to IXCs at no charge on an expedited basis.

117 *See id.*

118 Bell Atlantic suggests that the Commission prescribe a recovery period similar to the method approved by the Commission for the recovery of equal access nonrecurring costs. Letter from Marie Breslin, Bell Atlantic to Magalie Roman Sales, Secretary, FCC (Jan. 12, 1998).

119 APCC also argues that FLEX ANI should be federally tariffed. APCC Comments at 18 n.25.

120 Bell Atlantic states that it will make a minor language modification to its Feature Group D access service offering to state that the nonrecurring charges associated with FLEX ANI will not be charged if a customer requests FLEX ANI for the purpose of complying with the payphone requirements. Bell Atlantic states that FLEX ANI will continue to be provided as an unbundled, optional feature of Feature Group D service. Letter from Marie Breslin, Bell Atlantic, to Magalie Roman Sales, Secretary, FCC (Jan. 12, 1998). Bell Atlantic made this filing on January 30, 1998. *See supra* note 115.

121 *See infra* para. 72, which states that a LEC must tariff FLEX ANI service to IXCs as required in this order no later than when 25% or more of the "smart" payphones it serves are capable of providing payphone-specific coding digits through FLEX ANI. We grant an extension for filing a FLEX ANI tariff from March 9, 1998 up to March 31, 1998 (with a scheduled effective date of April 15, 1998) for those LECs that have not filed tariffs to provide FLEX ANI to IXCs in compliance with the requirements of this order.

end office for all areas where it is not yet available. Beginning March 27, 1998, all LECs must provide on a monthly basis to IXCs, upon request: (1) the number of smart and the number of dumb payphones that are owned by the LEC PSP and independent PSPs in the LEC service area; and (2) the ANI for smart payphones and the ANI for dumb payphones owned by the LEC and independent PSPs that are providing payphone-specific coding digits and those that are not providing payphone specific coding digits in the LEC service area. Because many LECs have reported technical problems in transmitting payphone-specific coding digits even when FLEX ANI is available for a payphone, we require that in these two reports required herein, that LECs indicate which end offices and payphone ANI's are "coding-digit-capable." A payphone is "coding-digit-capable" when it is able to transmit payphone-specific coding digits that are capable of reaching an IXC point of presence (POP) for subscriber 800 and access code calls from payphones using 10XXX and 101XXXX. LECs may provide these reports earlier and LECs do not have to provide this information to an IXC that indicates that it does not require this information to pay per-call compensation.

37. As discussed above, as we required in the *Bureau Waiver Order*, and we require herein, LECs and PSPs must transmit payphone-specific coding digits as soon as they are technically capable, and no later than the waivers they have been granted. We note, however, that IXCs must request, test, and coordinate with LECs to obtain this service under carrier to carrier procedures to ensure that there are no problems in providing and receiving the FLEX ANI digits for a particular IXC or LEC.[122] We expect, however, that LECs will reduce the burden on IXCs of requesting FLEX ANI by simplifying the service request process. While PSPs are obligated, pursuant to the *Payphone Orders*, to compensate LECs for coding of the PSPs payphone lines for the transmission from the PSPs payphones of payphone-specific coding digits through LEC tariffed payphone services, PSPs are not required to request the LEC payhone-specific coding digits transmission service to IXCs.

C. *Charge to PSPs for FLEX ANI*

38. As established in the *Second Report and Order*, the costs incurred by the LECs in providing the coding digits necessary to identify calls that originate from each payphone is a cost of business of the PSPs for which they receive compensation from the IXCs on a per-call basis.[123] We authorized LECs to recover from PSPs their incremental costs of providing payphone-specific coding digits for purposes of enabling PSP calls to be identified by IXCs to pay compensation for each and every completed intrastate and interstate telephone call made using a payphone that is not otherwise compensated. LECs that are not currently providing FLEX ANI will incur costs in acquiring that capability in order to provide payphone-specific coding digits. LECs that already offer FLEX ANI, either as a Basic Service Element (BSE) or as a nonchargeable option, may need to upgrade their FLEX ANI services in order to provide payphone-specific coding digits, and so may also incur some costs as a result of this Order. In this section, we address tariffing issues related to the method for LECs to recover from PSPs their incremental costs of providing payphone-specific coding digits for purposes of enabling PSP

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122 *See, e.g.*, Letter from Michael Kellogg, LEC Coalition to Robert Spangler, FCC (Dec. 18, 1997).

123 *See Second Report and Order* at 52-53. APCC states that if additional charges for FLEX ANI are placed on dumb lines, and not smart lines, then the compensation rate should be adjusted for dumb lines. APCC argues that PSPs should not be charged for more than their fair share of the costs, not including calls for equal access conversion. APCC argues that some of the costs of implementing FLEX ANI should be paid by IXCs, and that charges should be equally shared by PSPs with smart and dumb payphones. APCC Comments at 19.

calls to be identified by IXCs to pay compensation. We specify rate structure and rate level requirements, and price cap treatment of the rate element that we have allowed LECs to create for the purpose of recovering their costs of implementing payphone-specific coding digits.

1. Rate Structure and Rate Level Issues

39. We require LECs to recover the costs of their provision of payphone-specific coding digits through nonrecurring charges (NRCs).[124] Based on the Bureau's analysis of prior FLEX ANI tariff filings, it appears that LECs incur only nonrecurring costs in their provision of FLEX ANI.[125] Our general rate structure policy is that LECs should recover costs in the manner in which those costs are incurred.[126] Therefore, we require LECs in this proceeding to establish NRCs for the provision of payphone-specific coding digits no later than 30 days after full FLEX ANI implementation. In order to spread the burden on PSPs for recovering the NRCs, we would consider rate structures, such as, one in which the LEC's nonrecurring costs are recovered in monthly installments over a specific period.[127]

40. We also conclude that any LEC revising its tariffs pursuant to this Order should be authorized to recover no more than the incremental costs of implementing the requirement that they provide payphone-specific coding digits for payphone compensation.[128] We conclude that it is reasonable to permit LECs to recover the costs they incur solely to come into compliance with this Order, but we see no reason to permit LECs to increase their rates above that level, or to shift any portion of their overhead costs to PSPs by including overhead loadings in the rate charged to PSPs.

2. Price Cap Issues

124 The costs of implementing FLEX ANI to transmit payphone-specific coding digits must be spread across all payphones served by a LEC. Thus, a LEC must charge the same recovery rate element for payphones owned by a LEC PSP and independent-owned PSPs to recover the costs of implementing FLEX ANI for payphone compensation.

125 US West Communications, Inc., Revisions to Tariff F.C.C. No. 1, Order, 7 FCC Rcd 3460, paras. 5-6 (Com. Car. Bur. 1992) (*US West Flex ANI Order*).

126 *Access Charge Reform*, First Report and Order, CC Docket No. 96-262, 12 FCC Rcd 15982 (1997); *Investigation of Interstate Access Tariff Non-Recurring Charges*, CC Docket No. 85-166, Phase I, Part 3, 2 FCC Rcd 3498, 3501-02 (paras. 32-33) (1987).

127 We anticipate that the time period for LECs to recover the incremental costs of implementing FLEX ANI for the purposes of payphone compensation may vary. Therefore, we do not herein specify a recovery period, but allow LECs to propose reasonable recovery periods when they file their tariffs for FLEX ANI. BellSouth states that after implementation is complete it will file a federal tariff to charge PSPs on payphone access lines similar to the federal tariff for subscriber line charges. Letter from Ben Almond, BellSouth to John B. Muleta, FCC at 1-2 (Sept. 30, 1997).

128 The incremental costs incurred by LECs that already have implemented FLEX ANI for other purposes generally will be less than the incremental costs for those LECs that have not already incurred the costs of installing, activating, and performing translations for FLEX ANI delivery. The costs also will vary depending on whether software upgrades are needed, whether FLEX ANI software must be loaded, or if FLEX ANI software merely needs to be activated.

41. Under the price cap rules, a "new service" is one that expands the range of service options available to a LEC's access customers, while a "restructure" is simply a modification of charging or provisioning a service that does not result in a net increase in the range of service options available to customers.[129] For those price cap LECs that do not already offer FLEX ANI, the tariff filing to offer payphone-specific coding digits needed to comply with this Order would ordinarily constitute a new service. For price cap LECs that need to revise an existing FLEX ANI tariff to comply with this Order, that revision would ordinarily constitute a restructure. For reasons discussed below, however, we require the price cap LECs to provide payphone-specific coding digits outside price cap regulation pursuant to Section 61.42(f) of the Commission's rules (47 C.F.R. §61.42(f)).

42. With respect to new services, LECs ordinarily are required to incorporate a new service into the appropriate price cap basket at the time of the first annual access filing following the completion of the base period in which that new service is introduced.[130] The Commission permitted LECs to keep new services outside of price cap regulation, and then increase their price cap indices (PCIs) to reflect the introduction of new service, at least in part to encourage price cap LECs to be innovative.[131] In this case, however, we are directing LECs to provide payphone-specific coding digits to comply with Section 276 of the Communications Act. Therefore, encouraging or rewarding innovation is not relevant here. Furthermore, if we were to permit incumbent price cap LECs to incorporate this new service into their PCIs, it would be necessary to mandate an exogenous cost decrease at some time in the future to reflect the LECs' completion of the recovery of their costs.[132] Thus, we can avoid unnecessary complexity and PCI fluctuations by requiring price cap LECs to recover their costs of implementing payphone-specific coding digits outside of price cap regulation.

43. With respect to restructures, price cap LECs are not permitted to increase their PCIs in their next annual access filings, as they are incorporate new services into their price cap baskets.[133] As a result, the price cap rules could prevent LECs from recovering their incremental costs of providing payphone-specific coding digits to comply with this Order. By holding this service outside of price cap regulation, however, price cap LECs already offering Flex ANI will be able to recover those incremental costs.

3. <u>Other</u>

44. We reject the argument that IXCs should not be required to compensate PSPs for

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129 *Policy and Rules Concerning Rates for Dominant Carriers,* 5 FCC Rcd 6786, 6824 (1990), para. 312 *(LEC Price Cap Order). See also Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry,* 12 FCC Rcd 21,354, 21,372 (1996) at n. 48 (*Access Reform Third Report and Order*).

130 *See* 47 C.F.R. § 61.45(f).

131 *LEC Price Cap Order*, 5 FCC Rcd at 6825, paras. 318-19.

132 *See, e.g., Access Reform First Report and Order*, 12 FCC Rcd at 16113-19, paras. 302-14 (requiring price cap LECs to reduce their PCIs to reflect the completion of the recovery of amortized equal access costs).

133 *See* 47 C.F.R. § 61.49(e).